

**NATIONAL CRIME PREVENTION AND PRIVACY COMPACT
COMPACT COUNCIL MEETING
ATLANTA, GA
MAY 23-24, 2000**

MEETING REPORT

The meeting of the Compact Council was called to order at 9:00 a.m. on May 23, 2000, in the Swissotel, Atlanta, Georgia, by Vice Chair Donna Uzzell, Florida Department of Law Enforcement. Vice Chair Uzzell welcomed all the members of the Compact Council and the distinguished guests to the second meeting of the Compact Council.

Mr. Emmet Rathbun, FBI Unit Chief, called the roll of the Compact Council members. The following Compact Council members, or their proxies, were introduced:

- **State Compact Officers - Two - Year Term:**
 - Mr. Dennis DeBacco, Nevada Highway Patrol
 - Mr. Paul Heppner, Georgia Bureau of Investigation
 - Mr. Larry Fasbender, **(Proxy for Mr. Wilbur Rehmann)**, Montana DOJ
 - Ms. Donna Uzzell, Florida Department of Law Enforcement
- **Chief Administrators of Non-Compact States - Interim Term**
 - Lt. Clifford Daimler, Oregon State Police
 - Lt. Col. Jeffrey Harmon, Maine State Police (arrived later in the morning)
 - Ms. Karen McDonald, Minnesota Bureau of Criminal Apprehension
 - Major Frank McNulty, New Jersey State Police
- **Federal Noncriminal Justice Agency Representative - Three -Year Term**
 - Ms. Kathy Dillamon, Investigative Services, Office of Personnel Management
- **Federal Criminal Justice Agency Representative - Three - Year Term**
 - Inspector John Swanson, U.S. Postal Inspection Service
- **Advisory Policy Board Representative - Three - Year Term**
 - Mr. William Casey, Boston Police Department
- **Federal Bureau of Investigation - Three - Year Term**
 - Mr. David Loesch, FBI CJIS Division

Vice Chair Uzzell introduced Inspector John Swanson, U.S. Postal Inspection Service, as a new Council member replacing Mr. Arthur Peoples. Vice Chair Uzzell explained that Chairman Wilbur Rehmann was unable to attend the meeting because he was on a leave of absence from the Attorney General's office. Agenda items were then addressed.

Approval of Minutes from Last Meeting

Compact Council Action:

Mr. Bill Casey made a motion to approve the minutes from the November 17-18, 1999, Compact Council meeting. Mr. David Loesch seconded the motion. The motion carried.

TOPIC #1 Standards Committee - Bylaws Amendment to Include Procedures for Adoption of Rules

This topic was presented by Mr. Emmet Rathbun. He stated that at the January 17, 2000, meeting of the Standards Committee, members considered various mechanisms for adopting rules/procedures. Lt. Col. Jeffrey Harmon, the committee chairman, suggested an amendment to the Bylaws to include a section on procedures for adopting rules, with the possibility of the Council having an “emergency rule-making” ability with a sunset provision for the rule if it is not subsequently adopted at the next scheduled meeting of the Council.

The Standards Committee proposed an amendment to the Bylaws and communicated such to the members of the Compact Council at least thirty days before the meeting. The Bylaws amendment as presented in the staff paper would add a new Section 9 with the remainder of the Bylaws to be renumbered. The amendment to the Bylaws would become effective immediately upon adoption by the Compact Council.

This Bylaws amendment would allow the Compact Council to adopt a final rule that would become effective 30 days after publication; or could be made effective immediately upon publication due to exigent circumstances. Optionally, the Compact Council could publish a proposed rule with a 30-day or longer comment period prior to adopting a final rule.

Compact Council Action:

Mr. Bill Casey made a motion to adopt the bylaw changes as written on page 2 of Topic #1 in the staff paper to be effective immediately upon adoption. The motion was seconded by Mr. Dennis DeBacco. A friendly amendment was made to change the word "shall" to the word "may" under section 9.2 Effective Date. The Vice Chair called for a vote by show of hands and the motion passed unanimously.

Vice Chair Uzzell mentioned Page 8, Section 8.6 of the Bylaws, titled "ATTENDANCE AT MEETINGS" and the Council's original discussion on using the language in the existing APB Bylaws. The Council discussed the current language in the Council's Bylaws regarding attendance at two consecutive meetings. Mr. Paul Heppner indicated the Bylaws states that "if a Compact Council member or his/her proxy fails to attend two consecutive Compact Council meetings, then such Compact Council member shall relinquish membership on the Compact Council...". It was mentioned that since Council members are able to send a proxy in their absence, this should provide sufficient flexibility for members and the Council. Members of the Council agreed that the way this section of the Bylaws was written is more than sufficient.

TOPIC #2

Nonserious Offense List and State Requests for Exceptions

Mr. Cal Sieg, CJIS attorney, presented this topic. The FBI's current practice does not allow for maintaining nonserious offenses. In 1971, the National Crime Information Center/Computerized Criminal History (NCIC/CCH) Background, Concept, and Policy Paper, as amended by the NCIC Advisory Policy Board (Board), required that arrests entered into the national index be restricted to serious and/or significant violations. The advantages of the policy included uniformity regarding the type of arrest data maintained at the national level and a reduction in the number of fingerprint submissions to the FBI for processing and filing. Pertinent language from the Advisory Policy Board's policy statement was codified in 1975 at T.

28 Code of Federal Regulations (CFR) § 20.32 (minor revisions were made in 1992 and 1999).
Examples of arrests and court actions which are nonserious are listed in the CFR.

Additionally, in 1976, the United States District Court for the District of Columbia considered the issue of nonserious offenses maintained in the federal system and directed the FBI to delete all such offenses from its criminal records prior to dissemination. (Tarlton v. Saxbe, 407 F.Supp. 1083 [D.D.C. 1976]) It should be noted that the Tarlton prohibition was predicated upon the CFR's definition of nonserious offense, rather than anything outside of the jurisdiction of the FBI to collect and retain pursuant to 28 U.S.C. §534. It is therefore within the ability of the FBI to amend the CFR and still comport with the decision.

The issue of exceptions to the nonserious offenses had recently been presented through the APB process. One region recommended that the FBI specifically define a nonserious offense and a serious offense. (Currently the FBI doesn't have a narrative sort of description, only a list of offenses that describe nonserious offenses.) However, other recommendations ranged from defining and keeping the nonserious offenses out of the record system, to the other extreme of including all arrests in the national file.

Mr. Bill Casey, reported that the Identification Services Subcommittee (ISS), had adopted a motion for the FBI to conduct a feasibility study of automatically checking all nonserious submissions against IAFIS. Additionally, the FBI will study the feasibility of maintaining all nonserious offenses in the national databases. The thought being - if it is important enough to be in the state bureau records then it is important enough be indexed in the FBI record.

Mr. Emmet Rathbun mentioned that one of the purposes of the Compact is to provide the legal framework to establish this cooperative federal/state system for interstate exchange of records for noncriminal justice uses. Rules established by the Compact Council will provide an infrastructure for the National Fingerprint File and the National Index. Topic #3 addresses the standards for state reporting and refers to the states contributing those offenses listed on the FBI's nonserious offense list.

Further discussion of this topic was deferred to the discussion of related matters in Topic #3.

TOPIC #3

Standards Committee - Discussion of the Participating States' and FBI Responsibilities as Defined in the Revised Qualification Requirements

Mr. Emmet Rathbun, mentioned that at its last meeting, the Council had referred this topic to the Standards Committee for review. A lengthy background paper on the origin of the NFF Qualifications Requirements was reviewed by the Standards Committee at their January 17, 2000 meeting. The Standards Committee recommended revisions to clarify/correct some verbiage in the document. It was noted that certain subparts in the document were applicable to fingerprint submissions and necessary to support general III access for criminal and limited noncriminal justice use, while other subparts were specific to only noncriminal justice use. Alternative methods to adopt the requirements document was discussed by the committee. The Council could endorse as a rule, only those subparts that were specific to noncriminal justice use, and acknowledge the other portions as generally accepted procedure in a reference document, relevant to criminal and noncriminal justice use. Both the APB and the Council have a joint interest in certain qualification requirements due to the fact that while the subpart addresses the mechanisms for populating the national indices, both criminal and noncriminal use of the indices occur. Committee members discussed that the APB should not have difficulty with the FBI proposed requirements since the procedures reflect current practice.

The Committee members made a motion that Compact Ratification be a precursor to implementing the procedures for NFF, as it was generally agreed that the course of action with the least amount of risk would be to only allow states to participate in the NFF after their respective legislature had adopted the Compact. Language to that effect was added to the Qualification Requirements. The Committee members suggested combining the FBI Participation Standards (Requirements) with the NFF Qualification Requirements into one document.

The draft NFF Qualifications Requirements as amended and endorsed by the committee was provided for Compact Council review, including a new section on the FBI Responsibilities.

The Compact Council adopted the National Fingerprint File Qualifications Requirements as presented in the topic paper with the exception of the following additions/deletions. Highlighted areas indicate additional verbiage, strike outs indicate deletions to the text.

1. Change to Footnote 1

The electronic reporting of results of applicant fingerprint impressions that have been processed (i.e., \$A.CFN and \$A.CFR) is optional.

2. Change to “Record Content and III Maintenance” section:

State Responsibilities

- A. ~~B.~~ For each record maintained, ~~by~~ an NFF state’s central criminal history record repository shall contain all known arrests, dispositions and custody/supervision actions occurring in that state.

3. Change to “**Accountability**” section

State Responsibilities

(C) An NFF state’s central criminal history record repository shall provide its indexed criminal history records in response to all requests made through the NFF and III for criminal justice purposes and, when based on positive identification, for noncriminal justice purposes as authorized by the Compact, without charge to and without the imposition of further requirements or obligations on the FBI or another state’s central criminal history record repository. An NFF state’s central criminal history record repository may charge fees for processing noncriminal justice fingerprint impressions submitted directly to it by Federal ~~noncriminal justice~~ agencies, unless fees are precluded by the Security Clearance Information Act.

Compact Council Action:

Mr. Bill Casey made a motion to adopt the NFF Qualification Requirements as amended for publication in the Federal Register - to be effective 30 days after publication.

Mr. Paul Heppner seconded the motion. The motion carried.

Compact Council Action:

Mr. Paul Heppner made a motion to support the IS Subcommittee recommendation of having the FBI study the feasibility of automatically allowing all fingerprint submissions, even nonserious offenses, to be queried against IAFIS and that the FBI examine the feasibility of changing the CFR to allow the FBI to retain all offenses.

Inspector John Swanson seconded the motion. The motion carried.

Ms. Karen McDonald made the following friendly amendment: The Compact Council supports the IS Subcommittee recommendation but after the feasibility study is completed the Compact Council will work with the APB to move forward with the results of the study. The friendly amendment was seconded by Inspector John Swanson.

TOPIC #4

Dispute Adjudication Committee - Discussion on Adopting a Rule for Adjudicating Disputes

Mr. Paul Heppner briefed the Council on this topic. In November 1999, the Council referred the development of a dispute adjudication process to a committee for consideration. The Dispute Adjudication Committee met on January 18, 2000, to develop a procedure for handling disputes under Article XI of the Compact and create a document detailing the process.

Mr. Paul Heppner led the discussion of a section by section analysis on the draft document created by the committee. The Council amended sections as appropriate.

The Dispute Adjudication Procedures were adopted as presented in the topic paper with the exception of the following additions/deletions: (Highlighted areas indicate additional verbiage, strike outs indicate deletions to the text.)

1. Raising disputes.

(c) Disputes may be based upon:

(3) a claim that in establishing a rule or standard or in taking other action, the Council has failed to comply with its by-laws or other applicable procedures established by the Council; or the rule, standard or action is not otherwise in accordance with applicable law; or

2. Referral to dispute resolution committee.

(b) In making a decision as to whether to grant a hearing, the ~~Chairman~~ Dispute Resolution Committee shall lean toward granting hearings to all disputants who raise issues that are not clearly frivolous or without merit.

~~(c)(b)~~ The Dispute Resolution Committee shall consider the matter and ~~make a recommendation to the Chairman as to whether to:~~

3. ~~Actions Decision~~ by Council Chairman.

~~(a) In making a decision as to whether to grant a hearing, the Chairman shall lean toward granting hearings to all disputants who raise issues that are not clearly frivolous or without merit.~~

~~(a)(b)~~ The Chairman shall communicate ~~his/her~~ the decision of the Dispute Resolution Committee to the person or organization that raised the dispute.

~~(b)(c)~~ If a hearing is not granted, the FBI or a party state may appeal this decision to the Attorney General pursuant to Section (c) of Article XI of the Compact (see Section 5 of this chapter).

~~(c)(d)~~ If a hearing is granted, the Chairman shall:

4. Hearing procedures.

(h) The proceedings of the hearing shall be recorded and shall be transcribed, as necessary. A record of the proceedings will be made and will be provided to the Attorney General if an appeal is filed pursuant to Section (c) of Article XI of the Compact.

5. Appeal to the Attorney General.

~~(b) An appeal to the Attorney General may not be based solely upon disagreement with the merits (substantive wisdom or advisability) of a rule or standard validly established by the Council within the scope of its authority under the Compact.~~

~~(b)(c)~~ Appeals shall be filed and conducted pursuant to rules and procedures established by the Attorney General.

(c)(d) Appropriate notice of an appeal shall be communicated to the Council Chairman by the appealing party.

Compact Council Action:

Mr. Bill Casey made a motion to adopt the proposed procedures as final and publish in the Federal Register - to be effective 30 days after publication. Inspector John Swanson seconded the motion. The motion carried.

**TOPIC #5 Procedures for Release of Interstate Identification Index (III)
Criminal History Record Information**

Vice Chair Uzzell presented a chronology of events that brought this topic to the Council's agenda. A summary of these points follows:

- Two issues have high-lighted the need for name-based III checks - Child Abuse Investigations and Emergency Placement of Children.
- Both these checks by nature are used under more exigent circumstances that would not allow fingerprint-based checks, but require more immediate access.
- The issues were taken to the CJIS Working Groups, Committees, and the Advisory Policy Board (APB), which recently reaffirmed that access for these purposes should be allowed; indirect access to III for law enforcement to provide to social service agencies.
- After the APB made its recommendation, Florida requested the U.S. Attorney General to immediately implement it.
- Chair Rehmann in turn wrote to the Attorney General requesting a decision be deferred until after the Compact Council could meet.
- Compact Council Chairman Wilbur Rehmann disseminated a letter regarding a SEARCH request about how this issue falls under the purview of the Compact Council.

Vice Chair Uzzell recognized Mr. Paul Woodard from SEARCH to speak to the issue first. Mr. Woodard summarized the memorandum from SEARCH to Mr. Simon as saying the Compact now governs the use of III for noncriminal justice purposes and that the Compact requires positive identification of record subjects before records can be accessed by means of the III System when not for criminal justice purposes.

Mr. Charles Simon, Department of Justice (DOJ), stated that the Attorney General was comfortable with the recommendations of the APB. The issue on authority to approve this request has been referred to the DOJ Office of Legal Counsel (OLC) for analysis. Although he did not have a final opinion, he stated that his comments represented with some high degree of confidence the direction in which OLC is going. He stated that OLC is heading in the direction of opining that the Compact does not affect the Attorney General's ability, through the FBI, to review and approve state statutes under P.L. 92-544. There is no legal requirement for fingerprints to accompany requests for background checks under P.L. 92-544; however it has been a longstanding policy of the APB, the FBI, and the DOJ to approve only those state statutes that insist on fingerprints.

Council Member Bill Casey questioned whether the Council has the jurisdiction to grant this exception. Mr. Simon responded, the Council does not have the authority to tell states they must provide records based on a name check, the FBI does have such authority. While it's long been FBI policy to require fingerprints, there's nothing in P.L. 92-544 that requires them and therefore the FBI and the Attorney General are in a position to approve this request under these exigent circumstances.

Mr. Bob McKeever from the Maryland Department of Public Safety next spoke on Maryland's concerns include the fact that according to the security section of the federal regulations, noncriminal justice agencies cannot have direct access to criminal history record information. Office of Justice Programs recently verified this position via letter to the Maryland DPS.

A discussion followed on the possibility of a flood of requests coming in for name based checks via this fingerprint exception if this Florida request is approved. The "exigent circumstances" issue was emphasized. Also discussed was under whose purview, either the Compact Council or the Attorney General, did these issues fall. Mr. Simon's opinion was that the Attorney General could grant the request since it was associated with P.L.92-544, but the DOJ could not compel the Compact states to release their records for a name-based check.

Some Council members commented that a final determination as to jurisdiction on this issue was unresolved.

Compact Council Action:

Mr. Bill Casey moved to endorse the APB's position as outlined in Topic #5, from the December meeting. Karen McDonald seconded the motion.

Again, much discussion ensued over direct or indirect access and what defined exigent circumstances. Vice Chair Uzzell called for the vote.

The motion passed with 3 negative votes cast.

**Topic #7 National Fingerprint File Audit Criteria and Sanctions for
Noncompliance**

Ms. Cathy Morrison presented this topic, outlining the background/development of the audit criteria and current audit practices of the CJIS Audit staff. It was noted that the audit criteria closely follow the NFF Qualification Requirements. Every operational NFF state has been audited, however a sanctions process on the audit findings has not yet been determined. With the enactment of the Compact, the actual sanctions process should be considered by the Compact Council and a final rule adopted.

Lt. Col. Harmon reported on the January meeting of the Standards Committee and the discussion on the audit criteria and the development of a sanctions process. The Standards Committee was satisfied with the Qualification Requirements which was used as the basis for the audit criteria, but felt the sanctions should be decided upon by a Sanctions Committee. The Standards committee opined that a partnership with the APB Sanctions Subcommittee could be explored, however only one audit of NFF states by the CJIS staff should occur and it should include both criminal and noncriminal justice usage. The two sanctions groups could work out a joint decision-making process and send out joint sanction letters, one to the state CTO and one to the state Compact officer.

APB Chair David Gavin spoke to the issue of a partnership between the APB and the Compact Council since both groups help manage the same system. He agreed that the sanctions process be a cooperative effort.

Compact Council Action:

Mr. Bill Casey moved that the Chairs and Vice Chairs of the Compact Council and the APB meet to decide on ways the two groups could work together on this matter. Inspector John Swanson seconded the motion. The motion carried.

Lt. Col. Harmon made a motion to form a standing Sanctions Committee and direct that it meet with the APB Sanctions Subcommittee and report back to the Council with recommendations as to how to form a partnership to work with the APB. Mr. Dennis DeBacco seconded the motion. The motion carried.

Vice Chair Uzzell created the Compact Council's Sanctions Committee with the following members: Mr. Clifford Daimler (Chair), Mr. Dennis DeBacco, and Ms. Donna Uzzell.

Compact Council Action:

Lt. Col. Harmon moved to refer the NFF Audit Criteria back to the Standards Committee for review and recommendations for a Proposed Rule to be adopted by the Council.

Mr. Bill Casey seconded the motion. The motion carried.

Prior to the first day's adjournment, Mr. Paul Woodard of SEARCH asked if the Council would be discussing the fingerprint requirement in the second part of Topic #5. Vice Chair Uzzell commented that Topic #5 had been covered in its entirety earlier in the day and that the fingerprint issue was listed separately in the agenda only to allow for a break in the discussion. Mr. Rathbun stated that the agenda was prepared with the thought in mind that OLC would have a final opinion prepared on fingerprint exceptions for this meeting.

Discussion ensued once again on the fingerprint requirement in the Compact, the P.L. 92-544 exception, a Compact state's authority to refuse state records unless fingerprints were submitted, the legal ramifications of releasing information through III that were not fingerprint-based, OLC's jurisdiction or lack thereof to interpret the Compact, and the need to further address these issues.

Vice Chair Uzzell brought the discussion to a close, stating the Council would need more information to continue the discussion and she would entertain a motion to adjourn. Mr. Casey so moved and Mr. Daimler seconded. Meeting adjourned for the day.

May 24, 2000

The Compact Council reconvened at 9:00 a.m. on Wednesday, May 24th. The meeting was called to order by Vice Chair Uzzell, who resumed coverage of agenda items.

TOPIC #6 Standards Committee - Discussion of Record Screening Requirements and Nonparty State Agreements

Lt. Col. Harmon presented this topic, providing an overview of the discussion at the Standards Committee meeting in January. The staff paper included four options suggested by the committee. On behalf of the committee, Lt. Col. Harmon requested further direction from the Council prior to the Committee developing a detailed proposal.

Following discussion of the four options, the consensus of the Council was for Option #4 with consideration given to the NFF requirements to be sure there's consistency. The Standards Committee will meet and come back with a proposal for the next Council meeting.

TOPIC #8 Pilot Project to Demonstrate the Feasibility of Conducting Fingerprint Checks for Noncriminal Justice Purposes Using Less Than Ten Fingerprint Impressions

Mr. Rathbun presented this topic which had been presented at the APB Working Groups and Subcommittees. The Ohio Bureau of Criminal Identification (BCI) has developed a system which conducts employment, licensing and other non-criminal justice state background checks using fingerprint impressions from the two thumbs and two index fingers. The FBI will work with Ohio BCI on a test pilot project (if the funding is made available) to determine if this rapid, inexpensive four fingerprint check is a viable alternative at the federal level. A letter will be sent from CJIS to Congressman DeWine expressing the FBI's interest in studying the feasibility of such a program. Mr. David Loesch stated he could add a paragraph in the DeWine letter stating that the Compact Council and the APB both endorsed the project.

Compact Council Action:

Mr. Paul Heppner moved that the Compact Council endorse the Ohio Pilot Project.

Ms. Karen McDonald seconded the motion. The motion carried.

Discussion on this endorsement expressed concerns that the capacity to run the fingerprint check through the state first is extremely important. Also since this pilot is strictly for noncriminal justice checks, it would come under the purview of the Council to monitor the efficiency of checks of the National Indices based on less than ten prints.

Compact Council Action:

Lt. Col. Harmon moved that the Compact Council request that the FBI, in the development of this Pilot Project, take into consideration that the less than ten print check need to be processed through the State Identification Bureaus and that the capability to do the less than ten print check at the state level be developed in conjunction with the development of the less than ten print check capability at the national level. Lt. Daimler seconded the motion. The motion carried.

Compact Council Action:

Lt. Col. Harmon moved that the Council request that the FBI regularly report back to the Standards Committee who would report back to the Council on their Pilot Project for the purpose of keeping the Council informed so that, at the conclusion of the Pilot, the Compact Council would be able to make a decision as to whether a less than ten print noncriminal justice search would be accepted methodology. Mr. Bill Casey seconded the motion. The motion carried.

Another concern for the Council was the investment the states had made into electronic systems and that the FBI insure that the standards employed (ANSI NIST) in the Pilot are consistent with the databases established at the state level so that these databases would be searchable under the Pilot Program.

Compact Council Action:

Mr. Paul Heppner moved that the FBI take into account in the development of these remote search devices the existing standards that apply to the current databases that the states have developed. Mr. Bill Casey seconded the motion. The motion carried.

TOPIC #9 Development of an Electronic Non-ident Applicant Database

Ms. Cathy Morrison presented this topic as referred to the Compact Council via the APB's Northeast Working Group, along with a transcript of the Northeast's commentary on the topic. The Northeast Working Group asked the Compact Council to consider the issue and decide if the Council wished to rule on the merits of the proposed applicant database. Ms. Morrison gave a brief narrative of the legalities to maintain applicant fingerprints in a national database, and the general details involved in the search of criminal fingerprints against the applicant file, and the subsequent notifications when fingerprint identifications were made. The action taken by each of the Working Groups with respect to the staff paper was also presented.

Compact Council Action:

Mr. Bill Casey made a motion that the Compact Council strongly endorse that the FBI study the viability of developing an electronic non-ident applicant pointer system and/or database and report back to the full Council. Mr. Paul Heppner seconded the motion. The motion carried.

Department of Justice Opinion on Compact Council Liability Coverage Under the FTCA

The Council discussed a memorandum from CJIS Attorney Hal Sklar synthesizing an opinion from DOJ's Civil Division, Tort Branch. The DOJ responded to the Compact Council's request for clarification on whether the Council members have liability protection in regard to their Compact Council actions. The opinion suggested that there is no coverage under the Federal Tort Claims Act (FTCA).

Compact Council Action:

Mr. Bill Casey made a motion that the Compact Council Chairman draft a letter to the Attorney General and copy to the FBI Director and Senator DeWine requesting that the members of the Compact Council should be covered in regards to liability protection under the Federal Tort Claims Act since the Council is not an advisory board but an entity established by Congress. Support for legislation adding express language to that effect is requested. The motion was seconded by Mr. Dennis DeBacco. The motion carried.

Mr. Sklar commented on the DOJ opinion stating that the nonfederal Council members probably would end up "slipstreaming" behind the federal employees in any litigation and that multiple state statutes exist to protect state employees. Mr. Cal Sieg explained that under any FTCA action, the plaintiff is required to first seek an administrative review and most cases are resolved at this level. Mr. Sieg also stated that FTCA covers torts, acts of negligence, and that he found it hard to imagine any FTCA negligent acts by the Compact Council. Any legal action taken against a Council member would more likely fall under a Bivens, or 1983 action, which covers any allegation of an intentional violation of a constitutional right. Mr. Sieg is in the process of getting an opinion on Bivens and will report back to the Council.

TOPIC #7A

Pete Sessions Bill - Discussion on Background "Name Checks" for Volunteers

Vice Chair Uzzell spoke earlier in the day with Congressman Sessions' office for clarification on whether the topic was to be presented to the Compact Council for information only or if some Council action was desired. The topic of name-based background checks for volunteers is presented to the council for information only at this time.

This bill (HR 4424) requests legal access to criminal history information through name checks on volunteers.

Compact Council Action:

Mr. Bill Casey made a motion that the Compact Council go on record as strongly opposing this legislation. Lt. Col. Harmon made a friendly amendment to the motion that a copy of the opposition letter be sent to the Chairman of the Committee so that the Council is on record with Congress as opposing this legislation. The motion was seconded by Lt. Daimler. The motion carried.

Mr. Hal Sklar informed the Council that a competing bill (HB3410) was introduced in Congress to establish a National Clearinghouse, either within the federal government or a private agency, that would request and receive the criminal history information, make a qualifying determination, and forward the decision to the entity requesting the information. The entity requesting the checks on volunteers would no longer be liable for disqualifications that are later challenged.

Other Business

Lt. Col. Harmon opened a discussion on the Council's need for advice by independent counsel. One of the Council's responsibilities is to render initial interpretation of the meaning of the Compact and, in rendering this interpretation, disputes may arise. FBI/CJIS employees represent the interest of the CJIS Division, SEARCH represents the states' interests, and DOJ's Office of Legal Counsel represents the interests of the Department of Justice/ the Attorney General. In the resolution of any disputes, the Council has no one solely representing the interests of the Compact Council.

Compact Council Action:

Lt. Col. Harmon made a motion that the Compact Council Chair write a letter to FBI Director Freeh outlining the potential conflict of interest issues and requesting that he assign legal counsel to provide advice to the Compact Council on the interpretation of the provisions of the Compact. Mr. Bill Casey seconded the motion. The motion carried.

Mr. Emmet Rathbun brought to Council's attention three technical errors in the Compact:

- in Article III (A) (1) (b), the (A) is left out of a reference to Article III (A) (1).
- in the last sentence of Article V (c), the *s* on records should be removed to read *record repositories*; and
- in Article XI, the reference to Article V should be changed to Article VI.

Mr. Rathbun suggested that the Council note these corrections in one of the rules to be published in the Federal Register.

Compact Council Action:

Mr. Bill Casey made a motion to include the three clarifications in the publication of rules. Lt. Col. Harmon seconded the motion. The motion carried.

Vice Chair Uzzell summarized the action items resulting from the meeting and discussed dates and location of the next meeting. The meeting was tentatively scheduled for the week of October 23, 2000, with the location to be determined. The Executive Committee will work with

the FBI to finalize the plans. Mr. Bill Casey moved to adjourn. Vice Chair Uzzell adjourned the meeting at noon on May 24, 2000.